

SUPREME COURT OF ARKANSAS

No.

IN RE: APPELLATE PRACTICE
CONCERNING DEFECTIVE BRIEFS

Opinion Delivered 3-8-07

PER CURIAM

The Supreme Court is troubled by the diminishing quality of appellate briefs. During the month of February, approximately twenty-four cases were circulated to this court or formally submitted for decision. Nine of those cases, or about one-third, had to be either dismissed as appeals from orders that were not final or returned to the attorneys for rebriefing. The obvious result of this is not only that justice was delayed for the parties, but an additional expense was incurred for added legal work. There was also the extra work placed on this court for justices who had prepared the case, only to find that there was a deficiency and the briefs did not conform to our rules.

The most prevalent problem leading to dismissal of a case due to a defective appeal is violation of Rule 54(b) of the Arkansas Rules of Civil Procedure, which is repeated in Rule 2(11) of the Arkansas Rules of Appellate Procedure – Civil. As the bench and bar know, Rule 54(b) requires that all claims involving all parties be resolved at the trial court level

before the case is ripe for appeal. Nevertheless, attorneys continue to overlook the fact that some claims and parties have not been resolved when they appeal a case. A prime example is forgotten John Doe defendants who are not dealt with in the rush to appeal, or a languishing counterclaim. Time and again, this has led to dismissal of the appeal without prejudice to refile.

Omissions in the abstract and Addendum are the second major deficiency. Our Supreme Court Rule 4-2 is clear that the pleadings, orders appealed from, and material exhibits and relevant testimony must be included in either the abstract or Addendum. A specific format for the briefs and a direction that appellees respond to appellants' points on appeal in the same order are also required. Yet, repeatedly there are glaring omissions in the filed briefs or some other failure to comply, which lead to an order from this court for counsel to rebrief the case within fifteen days.

There are several guides available to appellate counsel to avoid these pitfalls. There are, of course, the rules themselves, which are clear and succinct about what is required. There is also a checklist made available to attorneys by Leslie Steen, the Supreme Court Clerk. There is a model brief posted at the court's website at <http://courts.state.ar.us>. Finally, the Supreme Court Clerk's office stands ready to answer many of the basic questions about what is required.

Six years ago, this court amended its Supreme Court Rules to eliminate the harshness of an affirmance based on deficient appellate briefs. With this current raft of nonconforming

briefs, and the time wasted and expense incurred, this court may be forced in the near future to return to its former rule of affirmance.